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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**MICHAEL GRECCO
PRODUCTIONS, INC.,**

Plaintiff,

v.

TIKTOK, INC.,

Defendant.

Case No. 2:24-cv-04837-FLA-MAR

Hon. Fernando L. Aenlle-Rocha

JOINT RULE 26(f) REPORT

Scheduling Conference: October 25,
2024

Time: 1:00 p.m.

Location: Courtroom 6B

Original Complaint: June 7, 2024

Trial (Proposed): October 14, 2025

Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 26-1, and the Court's Order Setting Scheduling Conference, Dkt. 26, Plaintiff Michael Grecco Productions, Inc. ("Plaintiff" or "MGP") and Defendant TikTok, Inc. ("Defendant" or "TTI") respectfully submit this Joint Rule 26(f) Report, following their meeting of counsel on October 3, 2024.

a) **Statement of the Case.**

i. Plaintiff: Plaintiff asserts one (1) count of copyright infringement against Defendant with respect to the alleged unauthorized display and failed to take action or exercise its control to remove twenty-two (22) of Plaintiff's Work. The single count is based on a theory of direct infringement, vicarious infringement, or contributory infringement

ii. Defendant: The gravamen of Plaintiff's Complaint is that third parties created and posted videos to TikTok that allegedly contain Plaintiff's copyright protected photographs. Plaintiff alleges that it sent TTI DMCA takedown notices and that TTI failed to remove the allegedly infringing third-party videos. TTI denies that it has engaged in any acts of direct infringement, vicarious infringement, or contributory infringement. While TTI has not yet filed an Answer, it expects to assert important affirmative defenses, including that any use of Plaintiff's photographs is fair use under 15 U.S.C. § 107, that TTI is immune from liability, and/or that Plaintiff has not been damaged by any alleged infringement. TTI denies that Plaintiff is entitled to any damages or other relief sought through the Complaint. Defendant's investigation of this matter is ongoing and it reserves the right to raise additional affirmative defenses and/or counterclaims as this case progresses.

1 b) **Subject Matter Jurisdiction**. Plaintiff: Because the Complaint asserts one
2 (1) count of copyright infringement with respect to the alleged unauthorized
3 display and failure to take action or exercise control to remove twenty-two
4 (22) of Plaintiff's copyrighted photographs (the "Work") arising under the
5 Copyright Act, subject matter jurisdiction exists pursuant to 28 U.S.C. §§
6 1331 and 1338(a). Venue properly lies in this district pursuant to 28 U.S.C.
7 § 1400(a) because Defendant (which has a principal place of business
8 located at 5800 Bristol Parkway, Suite 100, Culver City, CA 90230) resides
9 or may be found in this district.

10 The parties agree that federal jurisdiction exists.

11 c) **Legal Issues**

- 12 i. Plaintiff states that the key legal issues are as follows: Defendant's
13 liability for the alleged unauthorized display and failure of removal of
14 Plaintiff's photographs and the amount to be awarded to Plaintiff in
15 damages.
- 16 ii. Defendant states that the key legal issues are as follows: whether
17 Plaintiff's copyright registrations are valid; whether the photographs
18 identified in the Complaint are protected by Plaintiff's copyright
19 registrations; whether Plaintiff's DMCA takedown notices are legally
20 sufficient; whether Plaintiff considered fair use before sending its
21 DMCA takedown notices; whether TTI had any obligation to remove
22 the allegedly infringing third-party videos from TikTok; whether TTI
23 has engaged in any volitional conduct to support Plaintiff's direct
24 copyright infringement theory; whether TTI had the requisite
25 knowledge of and material contribution to its user's alleged
26 infringement needed to support Plaintiff's contributory infringement
27 theory; whether TTI has the requisite control and direct financial
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benefit needed to support Plaintiff's alleged vicarious copyright infringement theory; whether the third party use of Plaintiff's photographs are a fair use; whether any of TTI's affirmative defenses bar Plaintiff's claims; whether Plaintiff has suffered any harm; whether Plaintiff is entitled to any damages.

d) **Parties, Evidence, etc.**

i. Parties: Parties in this matter are Plaintiff and Defendant. The parties designated in this suit are most likely to have relevant knowledge. The Parties do not currently anticipate any other parties being added.

ii. Evidence: Plaintiff identifies the following documents and things on which they may rely: Key documents include the Certificate of Registration from the Register of Copyrights, images documenting where the Photograph appeared/was displayed on Defendant's website, takedown notices provided to defendant.

Defendant identifies the following documents and things on which they may rely: Plaintiff's licensing agreements relating to the photographs at issue; Plaintiff's financial records relating to the photographs at issue; documents relating to Plaintiff's prior enforcement of the copyrights at issue; Plaintiff's correspondence with and records from the copyright office; documents and communications relating to Plaintiff's discovery of the allegedly infringing videos; documents and communications relating to Plaintiff's investigation of the allegedly infringing videos before sending the takedown notices, including whether they considered fair use; takedown notices relating to the photographs at issue; documents in the possession of the third parties who created and posted the allegedly infringing videos. Defendant's investigation of this matter

1 is ongoing and it reserves the right to identify and rely on additional
2 categories of documents as this case progresses.

3 e) **Damages.**

4 a) Plaintiff seeks either actual damages/disgorgement of Defendant's
5 profits or statutory damages in this lawsuit. Defendant's profits are
6 currently unknown (as discovery is pending). Plaintiff will make an
7 election of actual damages/disgorgement or statutory damages at the
8 appropriate time. As of the current date, Plaintiff does not know
9 precisely when Defendant first began infringing the Work and/or
10 when Defendant removed the Work from its website, webpage, and/or
11 social media and, therefore, it is not currently possible to determine
12 actual damages. To the extent Plaintiff elects to pursue statutory
13 damages, the standard (non-willful, non-innocent) range for such
14 damages is \$750.00 - \$30,000.00, subject to the Court's/jury's
15 discretion. Such damages may be increased up to \$150,000.00 if an
16 infringement is found to be willful.

17 b) Defendant denies that Plaintiff has plausibly alleged, or will be able
18 to prove, any actual damages. TTI denies that it made any profits
19 from the alleged third-party infringement and denies that Plaintiff is
20 entitled to a disgorgement of any profits. If anything, Plaintiff may
21 be entitled to a reasonable royalty based on its prior licensing
22 agreements, the amount of which is in the control of Plaintiff. TTI's
23 alleged infringement has not been willful and any statutory damages
24 should be limited to the minimum amount permitted under the law.
25 Regardless, TTI denies that Plaintiff is entitled to any damages
26 because TTI is not liable for the conduct alleged in the Complaint.
27 Defendant intends to seek its attorneys' fees and costs for defending
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1 this action pursuant to 15 U.S.C. § 505 and any other applicable law.

2 f) **Insurance**. Plaintiff is not presently aware of any applicable insurance
3 agreement. Defendant is not presently aware of any applicable insurance
4 relating to the claims at issue in this dispute.

5 g) **Motions**. At this time, Defendant has filed a Motion to Dismiss and Reply.
6 Dkt. 24, Dkt. 34. Plaintiff has filed its opposition. Dkt. 32. The motion is
7 fully briefed and the hearing for the Motion is scheduled for October 18,
8 2024.

9 h) **Dispositive Motions**. Plaintiff believes that liability on the claim for
10 copyright infringement can be determined by a summary judgment motion.
11 Defendant may file a motion for summary judgment on Plaintiff's claims,
12 on TTI's fair use defense, and/or on any other affirmative defenses or
13 counterclaims that Defendant asserts. Defendant reserves the right to file
14 any other dispositive motion as the need to do so arises.

15 i) **Manual for Complex Litigation**. The Parties do not believe this case
16 necessitates the procedures of the Manual for Complex Litigation.

17 j) **Status of Discovery**. The Parties have not yet begun engaging in discovery
18 and have agreed to begin discovery following a ruling on Defendant's
19 Motion to Dismiss and after Defendant files an Answer.

20 k) **Discovery Plan**.

21 i. **Plaintiff**: Plaintiff anticipates taking at least one deposition (e.g., a
22 30(b)(6) deposition of Defendant). If, in the course of paper discovery
23 additional individuals with relevant knowledge are disclosed, Plaintiff
24 will consider taking their deposition as well. Plaintiff anticipates
25 issuing at least one set of Request for Admissions, Interrogatories and
26 Request for Production.

27 ii. **Defendant**: Defendant anticipates taking at least two depositions,
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1 including a deposition of Mr. Michael Grecco and a Rule 30(b)(6)
2 deposition of Plaintiff. Defendant anticipates that third party
3 discovery may be needed from the third parties who created or posted
4 the allegedly infringing videos on TikTok, and/or from third parties
5 who created, licensed, or assigned the photographs at issue.
6 Defendant reserves the right to depose any other persons identified as
7 having discoverable information during the course of discovery.
8 Defendant anticipates utilizing Requests for Production,
9 Interrogatories, and Requests for Admission.

10 iii. Parties: The Parties do not believe that there needs to be changes
11 under Rule 26(a) disclosures, other than the parties' agreement to
12 delay discovery until the Motion to Dismiss is decided. At this time,
13 the Parties do not request any variance from the discovery limitations
14 imposed by Local Rule and/or the Federal rules of Civil Procedure.
15 The Parties propose that they conduct general discovery, without the
16 need for discovery to be limited in phases. The Parties will agree on
17 reasonable procedures for discovery of electronically stored
18 information and anticipate submitting a Proposed Order Regarding
19 Discovery of Electronically Stored Information ("ESI") for the
20 Court's review and approval. The Parties agree that the "claw-back"
21 of inadvertently produced privileged or trial preparation materials
22 shall be governed by the applicable provisions of Federal Rule of
23 Civil Procedure 26 and Federal Rule of Evidence 502(d), and that
24 such inadvertent production and "claw back" shall not constitute any
25 waiver of such privileges. The parties agree that any privileged
26 information or work product created after the filing date of the
27 Complaint does not need to be recorded in any privilege logs that may
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1 be requested throughout this proceeding.

2 iv. Subjects on Which Discovery May be Needed:

3 Plaintiff anticipates that discovery will be required on: (1) the extent
4 each photograph comprising the Work was used for; (2) the receipt of
5 Plaintiff's takedown notices; (3) Defendant's communications
6 regarding the receipt of Plaintiff's takedown notices; (4) Defendant's
7 policy/procedures in removing copyrighted work; and (5) Plaintiff's
8 damages.

9 Defendant anticipates that discovery will be required on: (1) the
10 validity and enforceability of Plaintiff's copyright registrations; (2)
11 Plaintiff's creation of the photographs at issue; (3) Plaintiff's
12 discovery of and investigation into the allegedly infringing videos; (4)
13 Plaintiff's analysis of fair use and other factors when preparing and
14 sending its takedown notices; (5) the legal sufficiency of Plaintiff's
15 takedown notices; (6) Plaintiff's prior enforcement of its copyrights,
16 including any settlement agreements relating to the copyright
17 registrations at issue; (7) Plaintiff's licensing practices generally and
18 licensing agreements for the copyright registrations and photographs
19 at issue; (8) Defendant's affirmative defenses; and (9) third party
20 discovery on these topics.

21 v. Other Orders: The parties anticipate submitting a Stipulated
22 Protective Order for the Court's approval. The Stipulated Protective
23 Order will address the designation and treatment of confidential
24 information produced during discovery.

25 1) **Discovery Cut-Off:** The parties' proposed fact discovery cutoffs are
26 included in the attached Exhibit A. The parties agree that there is no need
27 to conduct discovery in phases.

1 m) **Expert Discovery.** The Parties agree that expert discovery should take place
2 in accordance with the Federal Rules of Civil Procedure 26(a)(2), with no
3 modifications thereto. The Parties' proposed schedules for expert discovery
4 are set forth in Exhibit A hereto.

5 n) **Settlement.** The Parties discussed settlement at their first meet and confer,
6 but have not come to an agreement and have not continued settlement
7 discussions. Plaintiff believes, pursuant to L.R. 16-15.4, either ADR
8 Procedure NO.1 or ADR Procedure No. 2 would be acceptable. Defendant
9 prefers private mediation under ADR Procedure No. 3.

10 o) **Consent to Magistrate Judge.** The Parties consent only to referring
11 discovery matters to the Magistrate Judge.

12 p) **Trial Estimate.** The Parties estimate trial will take between 4-5 days.
13 Plaintiff anticipates calling 2-5 witnesses. Defendant anticipates calling 2-5
14 witnesses. Defendant demands a jury trial.

15 q) **Trial Counsel.** Counsel for Plaintiff is Lauren Hausman and Jonathan
16 Alejandrino. Counsel for Defendant is J. Michael Keyes, Connor J. Hansen,
17 Dylan J. Harlow, and Kent Schmidt, all of Dorsey & Whitney LLP.

18 r) **Independent expert.** The Parties do not believe that the Court needs to
19 appoint an independent expert or master at this time.

20 s) **Other Issues.** The Parties are unaware of any other issues that should be
21 brought to the Court's attention at this time that would affect the status or
22 management of the case. No proposals for severance, bifurcation, or other
23 ordering of proof has been raised by either party.

24 The parties agree all documents relating to this case may be served via email
25 to counsel of record for the opposing party.
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ATTESTATION PER LOCAL RULE 5-4.3.4

The e-filing attorney hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized this filing.

/s/ Lauren M. Hausman
Lauren M. Hausman, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will electronically serve all counsel of record.

/s/ Lauren M. Hausman
Lauren M. Hausman, Esq.